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37 CFR Part 387

Copyright Royalty Board

[Docket No. 20-CRB-0008-CA (2020-2024)]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final determination.

SUMMARY: The Copyright Royalty Judges published for comment a proposed settlement governing royalty rates and terms for the retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers. Having received no comments, the Judges adopt the existing rates and terms as proposed by the settlement.

DATES: The rates are applicable to the period beginning January 1, 2020, and ending December 31, 2024.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB at <https://app.crb.gov> and perform a case search for docket 20-CRB-0008-CA.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, (202) 707-7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: On January 26, 2021, the Copyright Royalty Judges (Judges) received a Joint Notice of Settlement of Participating Parties¹ informing the Judges that they have agreed not to seek a quinquennial adjustment in the existing

¹ The Participating Parties are American Society of Composers, Authors and Publishers, Broadcast Music, Inc., Canadian Claimants Group (by Canadian Broadcasting Corporation), Devotional Claimants (Crystal Cathedral Ministries, *et al.*), Global Music Rights, LLC, Joint Sports Claimants, Motion Picture Association, Commercial Television Claimants (through the National Association of Broadcasters), NPR Claimants (through National Public Radio, Inc.), NCTA-The Internet & Television Association, Public Television Claimants (through Public Broadcasting Service), and SESAC Performing Rights, LLC.

Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A) - (B) for the 2020-2024² period. As a result, the Participating Parties requested that the Judges terminate this proceeding without making any changes in (1) the royalty rates currently set forth in 17 U.S.C. 111(d)(1)(B) and 37 CFR 256.2(c) - (d);³ and (2) the gross receipts limitations set forth in 17 U.S.C. 111(d)(1)(E) - (F). Joint Notice at 2.

Section 111 of the Copyright Act grants a statutory copyright license to cable television systems for the retransmission of over-the-air television and radio broadcast stations to their subscribers. 17 U.S.C. 111(c). In exchange for the license, cable operators submit to the Copyright Office semiannually royalty payments and statements of account detailing their retransmissions. 17 U.S.C. 111(d)(1). The Copyright Office deposits the royalties into the United States Treasury for later distribution to copyright owners of the broadcast programming that the cable systems retransmit. 17 U.S.C. 111(d)(2).

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d)(1). Royalty rates are based upon a cable system's gross receipts from subscribers who receive retransmitted broadcast signals. For rate calculation purposes, cable systems are divided into three tiers (small, medium, and large) based on their gross receipts. 17 U.S.C. 111(d)(1)(B) through (F). Both the applicable rates and the tiers are subject to adjustment. 17 U.S.C. 801(b)(2).

Every five years persons with a significant interest in the royalty rates may file petitions to initiate a proceeding to adjust the rates. 17 U.S.C. 804(a) - (b). No person with a significant interest filed a petition to initiate a proceeding in 2020. Therefore, the

² The period of years for the rates has been misstated as 2020-2025 in filings in this docket. The five-year period starting in 2020 ends in 2024, not 2025. The Judges have adjusted the docket number to reflect the correct span.

³ The Judges assume that the Participating Parties' reference to 37 CFR 256.2(c) & (d), which was a Copyright Office regulation relating to the Judges' predecessor, was intended to refer to paragraphs (c) - (d) of 37 CFR 387.2, which the Judges adopted at the conclusion of the last cable rate proceeding. *See* 81 FR 62812 (Sept. 13, 2016) and 81 FR 24523-24 (Apr. 26, 2016).

Judges initiated a rate adjustment proceeding by publishing a notice and request for petitions to participate in the *Federal Register*. 85 FR 34467 (June 4, 2020). The Judges accepted the petitions to participate of each of the Participating Parties and commenced a Voluntary Negotiation Period (VNP). Notice of Participants, Commencement of Voluntary Negotiation Period, and Scheduling Order (Oct. 20, 2020).⁴ In response to that Notice and Order, on January 26, 2021, the Participating Parties submitted a Joint Notice of Settlement of Participating Parties notifying the Judges that they have agreed not to seek a quinquennial adjustment in the existing Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A) - (B) for the 2020-2024 period.⁵ They requested that the Judges terminate this proceeding without making any changes in the applicable royalty rates and gross receipts limitations.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided the parties submit the negotiated rates and terms to the Judges for approval. That provision directs the Judges to provide those who would be bound by the negotiated rates and terms an opportunity to comment on the agreement. Unless a participant in a proceeding objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory rates or terms, or the Judges find the negotiated rates and terms are contrary to law, the Judges adopt the negotiated rates and terms. 17 U.S.C. 801(b)(7)(A).

On February 4, 2021, the Judges published the proposed settlement in the *Federal Register* and requested comments from interested parties pursuant to 17 U.S.C.

⁴ The Judges also received a petition to participate from Circle God Network Inc. (through David Powell), which the Judges concluded failed to state why it believed it had a significant interest in the proceeding. The Judges subsequently rejected Mr. Powell’s petition to participate, Order Rejecting David Powell’s Petition to Participate and Permitting Filing of an Amended Petition (Oct. 20, 2020), and later dismissed Mr. Powell from the proceeding. Order Dismissing David Powell (Nov. 5, 2020).

⁵ As with other filings in this docket, the Joint Notice of Settlement of Participating Parties addressed the 2020-2025 period. As indicated *supra*, this final action corrects the prior misstated dates and addresses a narrower period beginning January 1, 2020, and ending December 31, 2024.

801(b)(7)(A). 86 FR 8222 (Feb. 4, 2021). The Judges received no comments. Therefore, the Judges adopt the existing rates and terms in 37 CFR 387.2 (c) and (d) for the 2020-2024 rate period and close the proceeding. The Judges hereby give notice that the adopted rates and terms and gross receipts limitations will continue to be binding on all cable systems that retransmit over-the-air television and radio broadcast stations to their subscribers and on all copyright owners of the broadcast programming that the cable systems retransmit during the license period 2020-2024.

Dated: December 9, 2021.

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

Approved:

Carla D. Hayden,
Librarian of Congress.

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